IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1215

UNITED STATES OF AMERICA,
Respondent,

v.

GEORGE W. CADY,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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Petitioner prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this cause on December 9, 1977, and the denial of a petition for rehearing entered on January 10, 1978.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported, but is appended hereto as Exhibit A.

JURISDICTION

The judgment of the Court of Appeals was entered in December 9, 1977, and a Petition for Rehearing was denied on January 10, 1978. On January 19, 1978 this Court entered an order extending the time in which to file this Petition to March 1, 1978. Jurisdiction of this Court is invoked under Section 1254 (1), Title 28 United States Code.

QUESTIONS PRESENTED

1. Are mailings which are purely local and intrastate in character and merely incidental to an alleged scheme to defraud a proper subject for federal prosecution under 18 U.S.C. § 1341?

2. Is it an abuse of discretion for a trial court to refuse to dismiss an indictment obtained from a Grand Jury to which the Government presented false and prejudicial information, and failed to correct the false impressions thus conveyed?

STATEMENT

A. Conviction and Sentence

This petition is for the review of the judgment, conviction, and sentence of the United States District Court for the Eastern District of Missouri, Eastern Division, Honorable James H. Meredith, Judge, wherein the defendant, a practicing attorney and former judge, was convicted of eight counts of mail fraud and one count of conspiracy to commit mail fraud in violation of Sections 1341, 1342, and 371, Title 18, United States Code.

Petitioner was sentenced to five years on each of the eight substantive counts, such sentences to run concurrently. Additionally, he was sentenced to five years on the conspiracy count. Execution of the conspiracy sentence was suspended and a three-year term of probation, to follow the prison term on the other substantive counts, was imposed.

The United States Court of Appeals for the Eighth Circuit affirmed the conviction.

B. Summary of the Record

The original indictment herein included fifteen counts of mail fraud and one count of conspiracy to commit mail fraud. The indictment charged that Cady had devised a scheme to defraud insurance companies and that he had used the mails in furtherance of this scheme to defraud. Petitioner waived jury trial and was found guilty by the court of eight of the substantive counts (Counts 2, 4, 5, 6, 7, 10, 11 and 15) and the conspiracy count (Count 16).

Cady, an attorney in St. Louis, Missouri, was accused of defrauding insurance companies by making false and exaggerated claims to the insurance companies on behalf of clients who had been involved in minor automobile accidents. The scheme was based upon the preparation of false and inflated medical bills and reports by one Dr. A. Jesse Wolff, a St. Louis chiropractor. The bills and reports, which showed an inflated number of office visits to Dr. Wolff by the accident victims, were then transmitted by Wolff to Cady, who paid Wolff varying sums for the reports. Thereafter, the bills and reports were forwarded by Cady to various insurance companies, allegedly causing the insurance company adjusters to pay larger sums in settlement of the claims than might otherwise have been necessary if the bills and reports had accurately described the injuries received and the cost of treatment for such injuries.

The evidence showed that both Cady's and Wolff's offices were in the City of St. Louis, Missouri. The evidence further

showed that the offices of the various insurance companies which were allegedly defrauded were either in the City of St. Louis or St. Louis County. St. Louis County is contiguous to the City of St. Louis. Consequently the mailings, if any, took place in Missouri and all deliveries were made in Missouri and all within a very limited geographical area.

It was undisputed that the mails were not necessary to the success of the purported scheme, and that it could easily have been carried out without the use of the mail by hand delivery of the documents involved. In fact numerous reports were hand delivered.

Nevertheless the trial court and subsequently the Court of Appeals rejected petitioner's arguments based upon the lack of an interstate nexus, and the purely incidental nature of any mailings.

With reference to petitioner's point concerning abuse of the Grand Jury process by Government counsel, petitioner became aware during the trial that misleading and inflammatory evidence had been presented to the Grand Jury. The evidence was as follows: the Government called a Mr. Tabacchi and a Miss LuDuca, both former clients of the petitioner, before the Grand Jury. Counsel for the Government produced four carbon copies of settlement drafts which totalled $4,500.00. However, the actual settlement of the cases was for $1,975. Petitioner had returned the original settlement drafts to the insurance company because they were not acceptable in amount to him or his clients. The insurance company voided the initial drafts and issued two new drafts which were accepted by Tabacchi and LuDuca in settlement of the case.

Tabacchi testified that he recalled receiving a net settlement of between $500 and $1000. Government counsel did not inform the Grand Jury that the first two checks had been cancelled, but rather, indicated that although Cady received approximately $4,500 for the two cases, he had given the clients approximately two-thirds of $2,000, thereby defrauding them of a portion of the purported settlement. This evidence obviously was false as well as being totally irrelevant to the offenses charged in the Indictment, and made it appear that Cady was a lawyer who cheated his clients.

Counsel for the Government claimed at the hearing of the motion that he was unaware of the falsity of the evidence that he presented to the Grand Jury until after the witnesses left. He stated at the hearing on the motion to dismiss that he subsequently discovered that two of the checks had been cancelled by the insurance company. Additionally he admitted that he had in his file during the Grand Jury proceeding an insurance company memo cancelling the initial drafts. He further stated, however, that he could not recall whether he had imparted this information to the Grand Jury and acknowledged that if he had done so, it did not appear on the record. The Grand Jury was thereby left with the false impression that petitioner had defrauded his clients, and subsequently returned the Indictment against petitioner. However the trial court overruled the petitioner's motion to dismiss based upon these facts.

REASONS FOR GRANTING THE WRIT

1. Guidance Is Needed From This Court to Resolve an Apparent Conflict Among the Circuit Courts and to Determine Whether Mailings Which Are Purely Local and Intrastate in Character and Merely Incidental to the Alleged Scheme Should Constitute a Federal Offense Under Title 18 United States Code §1341.

It is well-established that the federal mail fraud statute does not purport to reach all frauds, but only those in which the use of the mails is an essential or integral part of the scheme. *Kann v. United States*, 323 U.S. 88 (1944); *Parr v. United States*, 363 U.S. 370 (1959); *United States v. Lynn*, 461 F. 2d 759 (10th Cir. 1970).

In *United States v. Chason*, 451 F.2d 301 (2d Cir. 1971), the Second Circuit Court of Appeals cautioned that essentially local fraud cases should be prosecuted by state authorities wherever possible. The Court explained that the theory behind the federal mail fraud statute is that local law enforcement officials are frequently hard-pressed to cope on their own with fraudulent practices which are based on geographically-extensive use of the mails. Consequently, in such cases, the application of federal criminal law is both proper and appropriate. See, *Chason, supra*, at 304. All other cases, however, should be dealt with by appropriate state law. *Lynn, supra*, at p. 763.

Application of Section 1341 was discussed in *United States v. Kelem*, 416 F.2d 346 (9th Cir. 1969), *cert. denied*, 397 U.S. 952 (1970). As in the instant case, appellants in *Kelem* insisted that the federal mail fraud statute did not proscribe the particular fraud which they had allegedly practiced. The Court of Appeals for the Ninth Circuit stated (at p. 347):

> "It is elementary that the jurisdiction of federal courts is defined and limited by the Constitution and congressional

> action; hence, statutes such as § 1341 should be carefully and strictly construed in order to avoid extension beyond the limits intended by Congress. *Healy v. Ratta*, 292 U.S. 263, 270 (1933); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 233-34 (1922). Moreover, such construction is especially appropriate where, as here, the Government urges that we construe a federal criminal statute so that it reaches conduct *which the states should appropriately control and which they can control, effectively.*" (emphasis supplied)

The Court upheld the conviction in *Kelem* since it was determined that the fraudulent scheme would not have been successfully conducted without the mailings which appellants caused. Such a holding would appear, then, to dictate a different result where the fraudulent scheme could, in fact, be easily carried out without using the mails at all, or where the scheme is wholly local in nature.

However, the Eighth Circuit Court of Appeals has stated that the local or intrastate nature of the mailings does not defeat the application of the federal mail fraud statute. *United States v. Britton*, 500 F.2d 1257, 1258-59 (8th Cir. 1974). In *United States v. Mirabile*, 503 F.2d 1065 (8th Cir. 1974), the Court utilized a very expansive reading of the mail fraud statute, stating at p. 1067:

> "We must interpret the plain language of § 1341 'broadly and liberally . . . to further the purpose of the statute; namely, to prohibit the misuse of the mails to further fraudulent enterprises.' . . . Such an interpretation is totally consistent with the ever-expanding role the mail fraud statute has played."

There is, therefore, an apparent disagreement in the Federal Circuits as to whether the federal mail fraud statute should reach every instance of conduct involving the mails even where there exists no true interstate or other Federal connection. This is

especially so, given the fact that the Postal Service is no longer a governmental entity. Similar conflicts as to the scope of § 1341 will undoubtedly arise where, given the essentially local nature of many fraudulent schemes, federal prosecution becomes singularly inappropriate and would encroach upon matter better left to state law enforcement officials. It is, therefore, important that lower courts be provided with guidelines regarding the inherent constitutional limitations of the federal mail fraud statute.

2. Guidance Is Needed to Further Clarify the Effect of and Remedy to Be Applied When the Government Presents False, Prejudicial and Misleading Information to a Grand Jury and Takes No Steps to Rectify the False Impressions Thus Conveyed.

It is fundamental that due process is violated if a person is indicted by a Grand Jury which is biased against him. *Lawn v. United States*, 355 U.S. 339, 349-50 (1958); *Raftis v. United States*, 364 F.2d 948, 954-55 (8th Cir. 1966); *Costello v. United States*, 350 U.S. 359, 363 (1956); *United States v. Sweig*, 316 F.Supp. 1148, 1153 (S.D. N.Y. 1970).

The basic duty of the prosecution in the presentation of a case before a Grand Jury has been set forth in *United States v. DiGrazia*, 213 F.Supp. 235 (N.D. Ill. 1963): "It is the duty of a prosecutor presenting a case to a Grand Jury not to inflame or otherwise improperly influence the jurors against any person." Clearly, the prosecutor has a continuing affirmative duty to present the true facts to the Grand Jury as these facts become available. Even where the presentation of false evidence by the Government is wholly inadvertent, where that information can be expected to prejudice the jurors in any way, the prosecution has a duty to correct that information, where possible, before the indictment is voted upon. Anything less would jeopardize the very notion of indictment by an impartial, unbiased Grand Jury.

Where a defendant claims bias or prejudice on the part of the Grand Jury, it is then incumbent upon the defendant to show that the Grand Jury did not act with the requisite impartiality and was actuated by Government-inspired bias and prejudice. *Gorin v. United States*, 313 F.2d 641 (1st Cir. 1963). Such a burden would appear to be met by showing that admittedly false evidence of a prejudicial nature was indeed presented by the Government in such a manner as to create needless animosity or ill-will in the minds of the jurors. However, as there is wide discrepancy as to just what a defendant must prove to meet this burden, it is clear that guidance is needed to clarify this burden and to fashion the appropriate remedy to be applied under such circumstances.

An individual's right to an unbiased Grand Jury must be safeguarded in the face of prosecutorial misconduct. Given the fact that the trial court has wide discretion in these matters, *Truchinski v. United States*, 393 F.2d 627 (8th Cir.), *cert. denied*, 393 U.S. 831 (1968), further guidance is needed from this Court as to what specifically may constitute an abuse of that discretion.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals.

Respectfully submitted,

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Appendix

United States Court of Appeals
for the Eighth Circuit

No. 77-1460

United States of America, Appellee,

v.

George W. Cady, Appellant.

Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: September 12, 1977

Filed: December 9, 1977

Before Stephenson, Circuit Judge, Markey, Chief Judge,* and Webster, Circuit Judge.

Webster, Circuit Judge.

Appellant George W. Cady appeals his conviction on eight counts of mail fraud and one count of conspiracy to commit mail fraud. The case was tried to the District Court.[1] On appeal

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* The Honorable Howard T. Markey, Chief Judge, United States Court of Customs and Patent Appeals, sitting by designation.

[1] The Honorable James H. Meredith, Chief Judge, United States District Court for the Eastern District of Missouri. Appellant was originally indicted on fifteen counts charging violation of the mail fraud statutes, 18 U.S.C. §§1341, 1342, and one count of conspiracy to violate the same in violation of 18 U.S.C. §371. At the close of its case, the government moved for dismissal of seven of the mail fraud counts. The trial judge convicted Cady on all of the remain-

appellant contends the evidence supporting his conviction was insufficient in three respects: (1) failure to prove beyond reasonable doubt that appellant was a party to the scheme to defraud; (2) failure to prove beyond a reasonable doubt that the mails were used in furtherance of a scheme to defraud; and (3) failure to prove beyond reasonable doubt that the mailings were of the quality required to invoke the federal statute. Additionally, he contends that erroneous and prejudicial information furnished to the grand jury deprived him of his Fifth Amendment due process rights. We reject these contentions and affirm the judgment of conviction.

Viewed in the light most favorable to the government, the evidence establishes the following facts. Appellant Cady is an attorney with an active personal injury practice. Together with Dr. A. Jesse Wolff, a chiropracter, he carried out a scheme in which medical reports showing an inflated number of office visits to Dr. Wolff by accident victims were submitted to insurance companies in support of claims for injuries incurred in automobile accidents. Some of these persons were referred to Dr. Wolff by Cady, while others retained Cady's services only after they had previously consulted Dr. Wolff. There is also evidence that documents indicating time lost from employment in excess of that actually lost were submitted by Cady to the insurance companies. These inflated claims caused insurance company adjusters to pay larger sums in settlement of the claims than might otherwise have been necessary.

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ing counts and sentenced him to a prison term of five years on each of the substantive counts, the terms to run concurrently, and a term of five years on the conspiracy count. Execution of the latter sentence, however, was suspended and a three-year term of probation, to follow the prison term on the other counts, was imposed. In addition, Cady was fined a total of $18,000 on the various counts.

I

The Scheme to Defraud

To establish a violation of §1341 the government must prove: (1) the existence of a scheme to defraud, and (2) the mailing of a letter for the purpose of executing the scheme. *Pereira v. United States*, 347 U.S. 1, 8 (1954); *United States v. Brown*, 540 F.2d 364, 373 (8th Cir. 1976). Appellant's initial attack challenges the sufficiency of the evidence to establish his knowing participation in a scheme to defraud. In matters other than the ultimate question of guilt, factual findings made by a trial judge in a trial to the court without a jury must stand unless they are clearly erroneous. *United States v. Marley*, 549 F.2d 561, 563 (8th Cir. 1977); *United States v. Rischard*, 471 F.2d 105, 107 (8th Cir. 1973). When the determination of a question of fact is also determinative of the ultimate question of guilt, it is the duty of the appellate court to determine whether there is substantial evidence, taking the view most favorable to the government, to support the fact determination by the trial court. *United States v. Marley, supra*, 549 F.2d at 563. This standard is the same as that used to review a determination made by a jury. *United States v. Rischard, supra*, 471 F.2d at 107.

Because the element of knowledge is rarely capable of direct proof, the fact-finder must view all of the pertinent circumstances to determine criminal intent or guilty knowledge. *United States v. Marley, supra*, 549 F.2d at 563. The government's evidence, viewed under the proper standard, is sufficient to establish Cady's role in the scheme and the use of the mails in furtherance thereof. In conjunction with the circumstantial evidence, the testimony of Dr. Wolff and several of the accident victims supports Judge Meredith's finding that Cady was a participant in the fraudulent scheme.[2]

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[2] In its brief the government argues that knowledge, or its equivalent, can be established as a result of reckless disregard of, or indif-

Dr. Wolff's testimony directly implicated Cady in the scheme. The testimony of an accomplice, even if uncorroborated by other evidence, is competent evidence. *United States v. Micciche*, 525 F.2d 544, 546 (8th Cir. 1975); *United States v. Montgomery*, 503 F.2d 55, 57 (8th Cir. 1974), *cert. denied*, 420 U.S. 910 (1975). In this case there was abundant corroboration. The credibility of that testimony was for the trier of fact. Dr. Wolff testified that he prepared inflated medical reports for Cady. While he prepared some false medical reports without special instructions, he testified that on many occasions he received instructions from Cady over the telephone as to what information or treatment duration to show on the medical reports.

One of these situations involved the claim of Susan Lehman, who at the time of her settlement was employed as a legal secretary in Cady's law office. She testified that after notifying Cady of her accident, he suggested that she consult with Dr. Wolff. She never went to Dr. Wolff for treartment or for any other reason, but a copy of a medical bill signed by Dr. Wolff showing twenty-eight visits was sent by Cady to MFA Insurance Co. in support of a claim on behalf of Miss Lehman. Dr. Wolff testified that he received information with respect to the details of her accident and instructions as to number of visits to report from Mr. Cady by telephone.

The record also reveals testimony by one Jill Remaly, who feigned injury after she and three other persons were involved in an accident. She consulted with Cady and told him of the accident and the feigning of injuries. He sent Miss Remaly to Dr. Wolff; she talked to Wolff but was not treated by him. No claim

ference to, the truth, *United States v. Marley*, 549 F.2d 561, 563-64 (8th Cir. 1977), and that Cady's activities here support, at the very least, a finding that he was recklessly indifferent to the truth. This Court need not reach this issue since there is sufficient independent evidence of his knowing and intentional participation in the scheme.

was ever filed in this matter because soon thereafter Miss Remaly was involved in a second accident. The claim for personal injury in the first case was dropped, and although Miss Remaly was only slightly injured in the second accident and received no medical treatment, Cady urged her to claim an injury and filed a claim for her which included a medical bill from Dr. Wolff's clinic in the amount of $175. Cady also submitted a lost work statement even though Miss Remaly was not unable to work and did not miss any time from her job. This claim was ultimately settled for $1,987.

These are merely the clearest examples of extensive evidence from which the trier of the fact could find beyond reasonable doubt that Cady knowingly and intentionally participated in the fraudulent scheme.[3]

II

Use of the Mails

Cady also challenges the sufficiency of the government's evidence to establish the use of the mails in furtherance of the scheme. Establishing the mailing element of the offense requires proof that: (1) the accused used or caused the use of the mails, and (2) the use was for the purpose of executing the deceptive scheme. *United States v. Brown*, 540 F.2d 364, 375-76 (8th Cir. 1976).

[3] It was argued that evidence admitted in connection with counts dismissed at the close of the government's case unfairly prejudiced Cady's case. Evidence of other similar crimes or acts is admissible to prove opportunity, intent, plan, knowledge, identity or absence of mistake or accident. Fed. R. Evid. 404(b); *United States v. Davis*, 557 F.2d 1239, 1246 (8th Cir. 1977); *United States v. Maestes*, 554 F.2d 834, 836-38 (8th Cir. 1977); *United States v. Jardan*, 552 F.2d 216, 218 (8th Cir.), *cert. denied*, — U.S. — (1977). This evidence was probative on the issue of Cady's knowledge and the existence of a common scheme, and there has been no showing that its value was substantially outweighed by the danger of prejudice. *See* Fed. R. Evid. 403.

A. **Proof of mailing.**

Our examination of the record convinces us that there was substantial testimony by those who received the mail matter described in the surviving counts[4] that it came in the mails from Cady. This testimony was based upon personal knowledge, or the fact that the date receipt stamp appearing on the mail matter was routinely affixed in the respective mail rooms of the recipients, and that these companies did not process hand-delivered mail, if there was any, in this manner.[5] This testimony was well corroborated. These practices are strong circumstantial evidence of mailing and the trier of the fact was entitled to consider them.[6] *See, e.g., United States v. Minkin,* 504 F.2d 350, 352-53 (8th Cir. 1974); *United States v. Joyce,* 499 F.2d 9, 17 (8th Cir. 1974); *United States v. Brickey,* 426 F.2d 680 (8th Cir.), *cert. denied,* 400 U.S. 828 (1970); *United States v. Leathers,* 135 F.2d 507 (2d Cir. 1943).

B. **Purpose of the mailings.**

Appellant also contends that the mailings set forth in the indictment were merely incidental to the scheme alleged and intrastate in character. From this he argues that a federal offense under §1341 has not been established.

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[4] *See* note 1 *supra.*

[5] Dr. Wolff testified that he mailed the documents described in Count 4 of the indictment, as well as other documents, to Cady. All of the mailings described in the other counts of the indictment were from Cady's office to the various claims offices, and there was substantial evidence in the record from which the trier of the fact could find that Cady caused such mailings.

[6] In *United States v. Joyce,* 499 F.2d 9 (7th Cir.), *cert. denied,* 419 U.S. 1031 (1974), the court found the use of date stamps to be insufficient proof of receipt through the mails. In that case, however, the company date stamped all incoming matter, including hand-delivered correspondence, which it regularly received. In contrast, the evidence in this case was that almost no correspondence was hand delivered and only mailed matter would have been date stamped upon receipt.

Because the mail fraud statute is written to apply to any scheme to defraud in which the mails are used, it is to be read expansively to effectuate that purpose. *United States v. Mirabile,* 503 F.2d 1065, 1066 (8th Cir. 1974), *cert. denied,* 420 U.S. 973 (1975). To fall within the mail fraud statute the mailing must be for the purpose of executing the scheme, must be employed before the scheme reaches fruition, but need not be an essential element of the scheme. *Id.* at 1067. Nonetheless, there must be evidence that the mailings were "sufficiently closely related to [the] scheme to bring [the defendant's] conduct within the statute." *United States v. Brown, supra,* 540 F.2d at 376 (brackets in original), *citing United States v. Maze,* 414 U.S. 395, 399 (1974).

The mailings charged in the indictment and proved at trial meet these requirements in all particulars. The false information related to special damages, such as medical treatment and loss of earnings, and were intended to induce, without litigation, a larger settlement than the facts justified. The mailings were thus all in furtherance of the scheme to defraud and occurred prior to the fruition of the scheme. *See United States v. Perkal,* 530 F.2d 604 (4th Cir. 1976) (mailing of fraudulent reports to insurance companies was use of the mails to defraud).[7]

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[7] It is irrelevant that all of the mailings in this case may have been intrastate in nature, *see United States v. Mirabile,* 503 F.2d 1065 (8th Cir. 1974) (involving mailing of understated gross sales figures to the state tax authority), or that the mailings were very localized in their scope, *see United States v. Minkin,* 504 F.2d 350, 353 (8th Cir. 1974), *cert. denied,* 420 U.S. 926 (1975) (mailings went a distance of twelve miles). As we said in *United States v. States,* 488 F.2d 761, 767 (8th Cir. 1973), *cert. denied,* 417 U.S. 909 (1974), "The focus of the statute is upon the misuse of the Postal Service . . ."

III

The Grand Jury Presentation

Appellant's final contention is that he was denied due process of law as a result of the presentation of erroneous evidence to the grand jury thus denying him his right to an impartial and unbiased grand jury. The particular evidence to which he objects consisted of carbon copies of settlement checks totalling $4500 together with testimony that his clients in that case received only about $1500. No evidence was presented that would indicate that these checks were in fact returned to the insurance Company by Cady and new checks issued in the amount of $1975 in settlement of the case. He argues that the grand jury very likely drew an incorrect inference that Cady's clients only received about $1500 in a case that was settled for $4500.

This contention may be dealt with summarily. No evidence was offered to show a purposeful act of deception by a government prosecutor. The inference, even if drawn by the grand jury, would not supply or support a probable cause finding upon which to return an indictment. The disputed exhibits were only a minuscule part of the government's evidence to the grand jury.

The Supreme Court has declined to adopt a rule permitting defendants to challenge indictments on the ground that they are not supported by sufficient or competent evidence. *United States v. Blue*, 384 U.S. 251 (1966); *Lawn v. United States*, 355 U.S. 339 (1958); *Costello v. United States*, 350 U.S. 359 (1956). The Supreme Court stated in *United States v. Blue, supra*, 384 U.S. at 1255 n.3:

> It does not seem to be contended that the tainted evidence was presented to the grand jury; but in any event our precedents indicate this would not be a basis for abating the prosecution pending a new indictment, let alone barring it altogether.

This Court has squarely refused to apply the exclusionary rule to grand jury proceedings. *West v. United States*, 359 F.2d 50, 56 (8th Cir.), *cert. denied*, 385 U.S. 867 (1966); *Travestad v. United States*, 418 F.2d 1043, 1049 (8th Cir. 1969), *cert. denied*, 397 U.S. 935 (1970). *A fortiori*, absent some evidence of gross purposeful deception by the prosecutor, an indictment legally valid on its face will not be overturned because it is possible to speculate that some of the evidence presented to the grand jury may have permitted an erroneous adverse inference as to the accused's professional practices. The District Court has wide discretion in these matters, and we hold it did not abuse its discretion in overruling appellant's supplemental motion at the close of the case to dismiss the indictment. *See Truchinski v. United States*, 393 F.2d 627, 632-33 (8th Cir.), *cert denied*, 393 U.S. 831 (1968)

Affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

United States Court of Appeals
For the Eighth Circuit

77-1460 September Term, 1977

United States, Appellee, vs. George W. Cady, Appellant.		Appeal from the United States District Court for the Eastern District of Missouri

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

January 10, 1978